**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**FAO (GWA) No. 287 of 1998**

**Date of decision 13.10.2006**

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**Vinod Kumari** **…Appellant.**

**Versus**

**Abhilasha** **…Respondent.**

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***Coram***

**The Hon'ble Mr. Justice : Surjit Singh, Judge.**

**Whether approved for reporting?**

**For the appellant:** **Mr. Rakesh Jaswal, Advocate.**

**For respondent :** **Mr. G.D. Verma, Sr. Advocate, with B.C. Verma, Advocate.**

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**Surjit Singh, Judge ( Oral )**

This appeal is directed against the order dated 7.7.1998 of learned Senior Sub Judge, Solan (exercising the delegated powers of District Judge under the Guardian & Wards Act), whereby the petition, under Section 6 of the Hindu Minority & Guardianship Act, filed by respondent Abhilasha initially against late Ram Pratap Chandel, who died during the pendency of the petition and the present appellant, has been allowed.

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**Whether reporters of Local Papers may be allowed to see the Judgment?**

2. Relevant facts, as per pleadings of the parties, may be summed up thus. Appellant Vinod Kumari was the legally wedded wife of late Ram Partap Chandel. It appears that no child was born from the wedlock of late Ram Partap Chandel and appellant Vinod Kumari. Ram Partap Chandel then married respondent Abhilasha and a daughter was born from that wedlock on 20.7.1988. Some differences cropped up between late Ram Partap Chandel and respondent Abhilasha. Ram Partap Chandel removed the minor child from the custody of respondent Abhilasha and kept the child with him and his first wife Vinod Kumari, appellant. Abhilasha, being the natural mother, filed a petition for the custody of the child. Ram Partap Chandel contested the petition in which he alleged that respondent Abhilasha had been mal-treating the child and at times even subjected her to physical torture. He also alleged that Abhilasha, respondent was a lady of easy virtue and several persons visited her in his absence. In the light of the aforesaid allegations, he pleaded that it was not safe as also in the interest of and for the welfare of the child that its custody be given to Abhilasha, even though she was her natural mother. The petition was still pending, when Ram Partap Chandel died. Appellant Vinod Kumari, the first wife of Ram Partap Chandel claimed that a will had been executed by Ram Partap Chandel on 20.7.1997, which provided that on the death of the testator the custody of the child was to be given to her. So she continued to contest the petition.

3. The learned Senior Sub Judge framed various issues based on the pleadings of the parties and ultimately concluded that respondent Abhilasha, the natural mother, was entitled to the custody of the child and accordingly allowed the petition. While passing the aforesaid order, the

learned Senior Sub Judge (exercising the delegated powers of District Judge) held that the will set up by Vinod Kumari was shrouded by suspicious circumstances and hence the same could not be assumed to be a valid will. However, this was not the sole ground for rejecting the claim of the appellant to the custody of the child. The trial Court also took note of the fact that the appellant was only a step-mother. Further it was noticed that the respondent appeared to be not a legally wedded wife of Ram Pratap Chandel and, therefore, the child was illegitimate and hence not only the appellant but even Ram Partap Chandel himself was not entitled to the custody of the child in the presence of the natural mother, namely respondent Abhilasha. Appellant Vinod KUmari, the first wife of Ram Partap Chandel, is aggrieved by the order of the learned Senior Sub Judge.

4. During the course of hearing of the matter, it was conceded that the child had attained majority on 20.7.2006. Learned counsel for the appellant also conceded the right of respondent Abhilasha to keep the child on account of her being the natural mother. However, he assailed the finding of the learned Senior Sub Judge regarding the validity of the will dated 20.7.1997, set up by the appellant.

5. It may be pointed out that the will dated 20.7.1997, copy Ext. RW-3/A, purports not only to give the custody of the child but also the entire property of the testator, except that which he had already bequeathed through an earlier will of the year 1991, to the appellant. Through the earlier will of 1991 Ram Partap Chandel had bequeathed his property situate in Kasauli and Nalagarh Tehsils to the minor child. It is stated by the learned counsel representing both the sides, that a suit with respect to the properties forming part of the estate of Ram Partap Chandel, was pending

in this Court in which besides the two ladies, who are party to this lis, the daughter of Ram Partap Chandel, for whose custody the case leading to the present appeal was filed, and one more lady, who claims to be the sole legally wedded wife, on account of her being married to Ram Partap Chandel, even prior to his marriage with appellant Vinod Kumari, and that in that suit the validity of the will, copy Ext. RW-3/A, is in question.

6. Though the learned counsel for the respondent insisted that the finding recorded by the learned Senior Sub Judge (exercising the delegated powers of District Judge) in the impugned judgment about the will being shrouded by suspicious circumstances be not disturbed, yet when confronted with the fact that in such a situation this Court will have to examine the correctness or otherwise of the aforesaid finding of the learned Senior Sub Judge and give its own finding, the learned counsel stated that the finding of this Court would not affect the daughter of Ram Partap Chandel, because she is not party to the present litigation nor will it affect the third lady, who claims to be the first wife of late Ram Partap Chandel.

7. Looking to the facts and circumstances of the case, particularly the fact that the will was set up by the appellant only to lay claim to the custody of the daughter of respondent Abhilasha and late Ram Partap Chandel and not for the purpose of claiming any property and also the fact that now she does not press the claim for the custody of the said girl and otherwise also the matter has become infructuous on account of the girl having attained majority, I am of the considered view that it will be in the interest of justice to set aside the finding and observation made by the learned Senior Sub Judge with regard to the validity of the will, copy Ext. RW-3/A, dated 20.7.1997 and to keep the question of the validity of the will

open for determination by this Court in the Civil Suit that has been filed to claim the estate of late Ram Partap Chandel.

8. Accordingly, the appeal is accepted. The impugned judgment of the learned Senior Sub Judge (exercising the delegated powers of District Judge), to the extent it holds the will dated 20.7.1997 (copy Ext. RW-3/A) invalid, is set aside. Final order regarding the custody of the girl, passed in favour of the respondent is, however, upheld.

**October 13, 2006 (BC)** **( Surjit Singh )**
**Judge**